

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Abbott GmbH & Co., KG,)
Abbott Bioresearch Center,)
Inc., and Abbott Biotechnology)
Ltd.,)

Plaintiffs,)

vs.)

Case No. 09cv11340-FDS

Centocor Ortho Biotech, Inc.,)
Centocor Biologics, LLC,)
Defendant.)

BEFORE: The Honorable F. Dennis Saylor, IV

Summary Judgment Motions

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
November 22, 2011

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United States District Court
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Mechanical Steno - Transcript by Computer

09:40:14 1 evidence your Honor considers, what's the standard of
09:40:17 2 review.

09:40:17 3 Now, the latter question is if there's new
09:40:20 4 evidence, it's de novo; if there's no new evidence, it's
09:40:24 5 substantial evidence under the APA.

09:40:27 6 But the middle question, which is what new
09:40:29 7 evid -- what new evidence can you consider is frankly a
09:40:33 8 little ambiguous right now. But I think *Hyatt* will get
09:40:37 9 decided by next June, so there will be more clarity.
09:40:41 10 That doesn't implicate the finality of the decision.
09:40:44 11 The finality of the decision is did the Board of Patent
09:40:49 12 Interferences render a full and fair final judgment?
09:40:54 13 And we suggest, your Honor, that the answer is yes.

09:40:58 14 All of the circuits that have considered
09:41:03 15 this issue have said that the pendency of an appeal does
09:41:08 16 not preclude finality. Now, to go to the -- to the
09:41:12 17 question, your Honor, I think, characterizes as vexing
09:41:15 18 is I don't know that it matters whether you characterize
09:41:19 19 it as a quasi-appeal, a subsequent administrative
09:41:23 20 proceeding. What we -- the more important issue is did
09:41:27 21 the Board render a final determination? And the best
09:41:33 22 indication, your Honor, that it was a final
09:41:35 23 determination is this: Centocor could appeal it; could
09:41:39 24 appeal it to the Federal Circuit; could appeal it to
09:41:43 25 your Honor in a 146 proceeding.

13:02:42 1 I understand you all are going to confer,
13:02:44 2 try to find a time when we can reconvene, whether on
13:02:48 3 December 7th or afterwards. As a practical matter,
13:02:54 4 let's assume it would be between two o'clock and five
13:02:57 5 o'clock, on December 7th, if that's what we do, in
13:03:00 6 Boston.

13:03:01 7 I might squeeze a little time on the
13:03:03 8 beginning and end of each of that, but let's call it
13:03:06 9 three hours, and we can probably work with Mr. Castles
13:03:12 10 on the calendar and find time later either of the two
13:03:16 11 weeks following to reconvene.

13:03:17 12 In the meantime, of course, the motions that
13:03:23 13 have been argued thus far are -- I'll take under
13:03:26 14 advisement.

13:03:26 15 Thank you, all. It is very helpful to me.
13:03:30 16 It was well argued all the way around, which I very much
13:03:34 17 appreciate.

13:03:35 18 Have a good Thanksgiving, everyone. Good
13:03:39 19 travel, Mr. Lee.

13:03:40 20 MR. LEE: Your Honor, could we just -- we
13:03:42 21 had suggested to the Court, I think, a possible trial
13:03:45 22 date of September 10th through October 12th. If the
13:03:49 23 Court could give us some guidance on whether that works
13:03:51 24 for you, just so we know that we can hold it.

13:03:55 25 THE COURT: I may have something already